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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**

8  
9 Nathaniel Turner, Jr.,

No. CV 19-01587-PHX-JAT (JZB)

10 Plaintiff,

11 v.

**ORDER**

12 Unknown Willson, et al.,

13 Defendants.

14  
15 Plaintiff Nathaniel Turner, Jr., who is currently confined in Arizona State Prison  
16 Complex-Florence, Browning Unit in Florence, Arizona, brought this civil rights case  
17 pursuant to 42 U.S.C. § 1983. (Doc. 1.) Defendant Willson moves for summary judgment.  
18 (Doc. 26.) Although Plaintiff was advised of his right and obligation to respond, Plaintiff  
19 did not respond to the Motion for Summary Judgment or seek an extension of the response  
20 deadline, and the time to do so has expired.<sup>1</sup>

21 The Court will dismiss the action for failure to prosecute, deny the Motion for  
22 Summary Judgment as moot, and terminate the action without prejudice.

23 **I. Background**

24 On screening under 28 U.S.C. § 1915A(a), the Court determined that Plaintiff stated  
25 a conditions-of-confinement claim against Defendant Sgt. Willson and directed Defendant

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27  
28 <sup>1</sup> The Court provided notice to Plaintiff pursuant to *Rand v. Rowland*, 154 F.3d 952, 962 (9th Cir. 1998) (en banc), regarding the requirements of a response. (Doc. 28.)

1 Willson to answer. (Doc. 8.) The Court dismissed the remaining claims and Defendants.  
2 (*Id.*)

3 **II. Failure to Prosecute**

4 On May 21, 2020, Defendant Willson filed the pending Motion for Summary  
5 Judgment. (Doc. 26.) That same day, the Court issued an Order with the Notice required  
6 under *Rand v. Rowland*, 154 F.3d 951, 962 (9th Cir. 1998) (en banc), which informed  
7 Plaintiff of his obligation to respond to Defendant's Motion for Summary Judgment within  
8 30 days and the requirements of a response under Federal Rule of Civil Procedure 56.  
9 (Doc. 28.) That Order was returned as undeliverable and unable to forward on June 9, June  
10 18, and July 1, 2020. (Docs. 29, 30, 31.) Several other Orders, including the Scheduling  
11 Order, have also been returned as undeliverable. (Docs. 11, 18, 24, 25.) To date, Plaintiff  
12 has not responded to the Motion for Summary Judgment, and he has not filed anything in  
13 this case since August 15, 2019.

14 Plaintiff has the general duty to prosecute this case. *Fid. Philadelphia Trust Co. v.*  
15 *Pioche Mines Consol., Inc.*, 587 F.2d 27, 29 (9th Cir. 1978). In this regard, it is the duty  
16 of a plaintiff who has filed a pro se action to keep the Court apprised of his or her current  
17 address and to comply with the Court's orders in a timely fashion. This Court does not  
18 have an affirmative obligation to locate Plaintiff. "A party, not the district court, bears the  
19 burden of keeping the court apprised of any changes in his mailing address." *Carey v.*  
20 *King*, 856 F.2d 1439, 1441 (9th Cir. 1988) (per curiam). If the Court were to order Plaintiff  
21 to show cause why dismissal was not warranted, the Order "would only find itself taking a  
22 round trip through the United States mail." *Id.*

23 It is well established that under Rule 41(b) of the Federal Rules of Civil Procedure,  
24 a district court has authority to dismiss a plaintiff's action because of his failure to  
25 prosecute or to comply with court orders. *See Fed. R. Civ. P. 41(b); Link v. Wabash R.R.*  
26 *Co.*, 370 U.S. 626, 629-30 (1962) (a district court has the inherent power to dismiss a case  
27 *sua sponte* for failure to prosecute); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260 (9th Cir. 1992)  
28 (holding that a district court may dismiss an action for failure to comply with any order of

1 the court); *see also Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (a district court may  
2 dismiss an action for failure to comply with a local rule).

3 In determining whether Plaintiff's failure to prosecute warrants dismissal of the  
4 case, the Court must weigh the following five factors: "(1) the public's interest in  
5 expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk  
6 of prejudice to the defendants; (4) the public policy favoring disposition of cases on their  
7 merits; and (5) the availability of less drastic sanctions." *Carey*, 856 F.2d at 1440 (quoting  
8 *Henderson v. Duncan*, 779 F.2d 1421, 1423 (9th Cir. 1986)). "The first two of these factors  
9 favor the imposition of sanctions in most cases, while the fourth factor cuts against a default  
10 or dismissal sanction. Thus the key factors are prejudice and availability of lesser  
11 sanctions." *Wanderer v. Johnson*, 910 F.2d 652, 656 (9th Cir. 1990).

12 Here, the first, second, and third factors favor dismissal of this case. Plaintiff's  
13 failure to keep the Court informed of his address and to comply with the Court's Orders  
14 prevents the case from proceeding in the foreseeable future. The fourth factor, as always,  
15 weighs against dismissal. The fifth factor requires the Court to consider whether a less  
16 drastic alternative is available. Without Plaintiff's current address, however, certain  
17 alternatives are bound to be futile.

18 The Court finds that only one less drastic sanction is realistically available. Rule  
19 41(b) provides that a dismissal for failure to prosecute operates as an adjudication upon the  
20 merits "[u]nless the dismissal order states otherwise." In the instant case, the Court finds  
21 that a dismissal with prejudice would be unnecessarily harsh. The Complaint and this  
22 action will therefore be dismissed without prejudice pursuant to Rule 41(b) of the Federal  
23 Rules of Civil Procedure. Defendant's Motion for Summary Judgment will be denied as  
24 moot.

25 **IT IS ORDERED:**

26 (1) The reference to the Magistrate Judge is **withdrawn** as to Defendant's  
27 Motion for Summary Judgment (Doc. 26).

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(2) The Complaint (Doc. 1) and this action are **dismissed without prejudice** for failure to prosecute pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. The Clerk of Court must enter judgment accordingly.

(3) Defendant Willson's Motion for Summary Judgment (Doc. 26) is **denied as moot.**

Dated this 3rd day of August, 2020.

  
James A. Teilborg  
Senior United States District Judge